

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-07-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE M. JAICHANDREN

L.P.A.NO. 170 OF 2002

The Commissioner
H.R.&C.E.(A) Department
Madras - 34

..Appellant /Defendant/Appellant

Vs.

Sri Bhagavanandhar and
Sri Dhayanandhar Matalayam
Pudupalayam, Cuddalore
represented by its hereditary trustee
G.Arunachalam

..Respondent/Respondent/Respondent

Prayer: L.P.A against the judgment and decree dated 01.08.2001
passed by this court in A.S.No.608/1995.

For Appellant : Mr.V.Srikanth, AGP
For Respondent : No Appearance

JUDGMENT

(The judgment of the Court was made by P.K. MISRA, J)

The Commissioner, Hindu Religious and Charitable Endowment
Department has filed this appeal under the Letters Patent challenging
the order passed by the learned single Judge in A.S.No.608 of 1995
dated 1.8.2001, under the following circumstances :-

The respondent had filed O.A.No.169 of 1996 before the Deputy
Commissioner, Hindu Religious & Charitable Endowment Board for
declaration under Section 63(a) of the Tamil Nadu Hindu Religious and
Charitable Endowments Act,1959, hereinafter referred to as the Act,
that the disputed institution is not a religious institution. It was
also prayed that the trustee was holding office as a hereditary
trustee as contemplated under Section 63(b) of the Act. The Deputy
Commissioner found that the institution is a religious institution and

declared the present respondent as hereditary trustee. Such order was challenged before the Commissioner in AP.No.214 of 1977, but the said appeal was rejected by the Commissioner. Thereafter, as contemplated under section 70 of the Act, the respondent filed O.S.No.633 of 1979 before the Subordinate Judge for declaration that the plaintiff institution is not a religious institution as defined under the Act and for setting aside the order of the Commissioner, HR & CE passed in the appeal.

2. The main assertion made in such suit was to the effect that the present hereditary trustee's paternal grandfather was a great devotee of two saints, namely, Sri Bhagavandhas Swamigal and Sri Dhayanada Swamigal, and after such saints attained nirvana, their mortal remains were interned and structures have been put up by such paternal grandfather of the trustee. Regular poojas were held in the samdahis. These samadhis are being administered by the male descendants of the founder trustee as per the instructions and the present trustee has been recognised as the hereditary trustee. It was further alleged that originally only 'Bali Peetams' were put up over the samadhis and there were no idols, but about 15 years before filing of the suit, idols have been placed near 'Bali Peetams'. It was further stated that the institution was not a Hindu religious institution since it is open to members of all religious and people of all religions are entitled to worship and in fact worshipping.

3. A written statement was filed on behalf of the present appellant, wherein it was contended that the suit institution was a religious institution and has been rightly found as such by the Deputy Commissioner and the Commissioner. It was further stated that since notice as required under Section 80 C.P.C., has not been issued, the suit was liable to be dismissed on that ground.

4. The trial court found that the origin of the suit institution has been from samadhis of two swamigals and even though certain idols have been placed near the samadhis in recent times, it cannot be said that suit institution was a religious institution as defined under the Act. For the aforesaid purpose, the Subordinate Judge relied upon a decision of this Court reported in 1977 (I) MLJ 125 (SOUNDHARA AMMAL v. THE TIRUCHIRAPALLI MAVATTAM MAHASURULI ALAYA BAKTHARGAL MADYA SANGAM), which in its turn had relied upon an earlier decision of this Court reported in 1955(I) MLJ 60 (BODENDRASWAMI MUTT v. PRESIDENT, H.R. & C.E. BOARD), wherein it has been indicated that mere presence of idols of Gods and recognised deities in the matam round the samadhi would not bring such institution within the definition of the temple and such samadhi cannot be considered as a public temple. On the basis of such conclusion, the trial court decreed the plaintiff's suit with a declaration that the institution was not a religious institution as defined under the Act. Such decision was challenged by the Endowment Commissioner before the

learned single Judge, wherein the learned single Judge by relying upon the decision reported in 1977(I) MLJ 125 (cited supra) confirmed the finding of the learned single Judge, giving rise to the present appeal.

5. In the present appeal, inspite of notice, there is no appearance on behalf of the respondent.

6. Learned counsel appearing for the appellant has submitted that even though as per the definition at the time of decision of the suit and the appeal the institution might not have been a religious institution under the Act, in view of the subsequent change in law, the decision of the trial court is required to be modified. It has been submitted by him that the definition of "religious institution" has undergone a change by virtue of the amendment effected by Tamil Nadu Act 10 of 2003.

7. Before the Act was amended as per Act 10 of 2003, the definition of 'religious institution' as per Section 6(18) was as follows :-

"religious institution" means a math, temple or specific endowment.

However, by amendment the definition is as follows :-

6(18) "religious institution" means a math, temple or specific endowment and includes,-

- (i) a samadhi or brindhavan; or
- (ii) any other institution established or maintained for a religious purpose.

Explanation.- For the purpose of this clause-

(1) "samadhi" means a place where the mortal remains of a guru, sadhu or saint is interned and used as a place of public religious worship;

(2) "brindhavan" means a place established or maintained in memory of a guru, sadhu or saint and used as a place of public religious worship, but does not include samadhi;"

8. Relying upon the aforesaid changed definition, the learned counsel for the appellant submits that in view of such changes in law, the judgment of the Civil Court is required to be modified and

the institution could be considered as "religious institution".

9. A perusal of the definition as per the amended provision makes it is clear that "religious institution" includes a samadhi. Such amendment, which came into force on 12.6.2003, leaves no room for doubt that a samadhi would also come under "religious institution".

10. Next question is whether the suit, which was filed at a time when such amendment was not in force can be disposed of by taking into account such change in law.

11. In the present case, there is no dispute that worship of the samadhi was being done by the members of the general public. In the absence of any such dispute and in view of the amended provision, since no other factual dispute needs to be resolved, there can be no doubt that the institution would be now considered as "religious institution" as contemplated in Section 6(18) of Act 10 of 2003.

12. Since the decisions relied upon by the trial court and the learned single Judge were based upon the definition existing prior to such amendment, it must be taken that the effect of such decisions has been taken away by the amendment effected under Act 10 of 2003. From the statement of objects and reasons of the amending Act, it is obvious that the legislature intended to include the places of samadhi and brindhavan as religious institutions to bring them under the control of Hindu Religious and Charitable Endowment Department.

13. Learned counsel appearing for the appellant has also submitted that there is no satisfactory evidence to the effect that the trustee was a hereditary trustee. However, such contention of the appellant cannot be accepted. Apart from the fact that in the proceedings under Section 63(b) the Deputy Commissioner has recognised the trustee as hereditary trustee, the materials on record, which have been referred to in the present proceedings, clearly indicate that the trustee was holding the office hereditarily and, therefore, such contention of the appellant cannot be accepted.

14. In such view of the matter, the decree of the trial court as confirmed in appeal is required to be clarified. It is therefore declared that the institution can be considered as "religious institution" within the meaning of Section 6(18) with effect from the date on which Tamil Nadu Act 10 of 2003 came into force. However, it is further declared that the trustee of the

institution is a hereditary trustee and such recognition as per Section 63(b) remains untested. The appeal is accordingly allowed in part. There would be no order as to costs so far as the present appeal is concerned.

Sd/
Asst.Registrar

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Sub Asst.Registrar

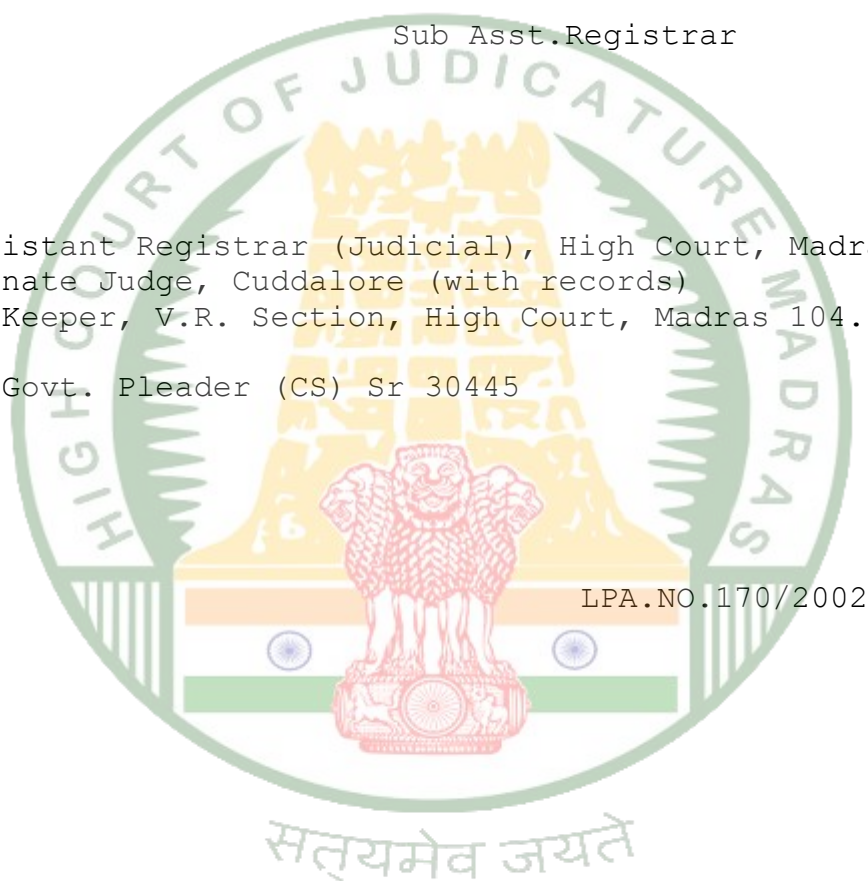
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To

1. The Sub Assistant Registrar (Judicial), High Court, Madras 104.
2. The Subordinate Judge, Cuddalore (with records)
3. The Record Keeper, V.R. Section, High Court, Madras 104.

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